

**1. UNITED STATE DISTRICT COURT
DISTRICT OF NEW JERSEY**

MELANIE SHEPARD *et al.*,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

GERBER PRODUCTS COMPANY

Defendant.

Case No.: 2:21-cv-01977-CCC-MF

**PLAINTIFFS' STIPULATION [AND
PROPOSED ORDER] TO
CONSOLIDATE ACTIONS UNDER FED.
R. CIV. P. 42(a)**

MUSLIN PIERRE-LOUIS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

GERBER PRODUCTS COMPANY

Defendant.

Case No.: 2:21-cv-04791-CCC-MF

JESSICA MOORE,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

GERBER PRODUCTS COMPANY

Defendant.

Case No.: 2:21-cv-02516-CCC-MF

JULIANA FONDACARO and
MAYRA VERDUZCO, on behalf of
themselves and a class of others
similarly situated,

Plaintiffs,

v.

GERBER PRODUCTS COMPANY,

Defendant.

Case No.: 2:21-cv- 05032-CCC-MF

LACY MARTIN and HOLLY
SILVERTHORN, on behalf of
themselves and a class of others
similarly situated,

Plaintiffs,

v.

GERBER PRODUCTS COMPANY,

Defendant.

Case No.: 2:21-cv- 05846-CCC-MF

LaKENDRA CAMILLE MCNEALY,
individually and on behalf of a class of
others similarly situated,

Plaintiff,

v.

GERBER PRODUCTS COMPANY,

Defendant.

Case No.: 2:21-cv- 09064-CCC-MF

NAJAH A. HENRY, et al, on behalf of
themselves and a class of others
similarly situated,

Plaintiffs,

v.

GERBER PRODUCTS COMPANY,
etc.

Defendant.

Case No.: 2:21-cv- 05864-CCC-MF

MICHELE WALLACE and
VANESSA GALLUCCI, *individually
and on behalf of all others similarly
situated*,

Plaintiff,

v.

GERBER PRODUCTS COMPANY

Defendant.

Case No.: 2:21-cv-09980-CCC-MF

WHEREAS, the above-captioned related proposed consumer class actions are pending before the United States District Court for the District of New Jersey, entitled: *Shepard v. Gerber Products Company*, Case No. 2:21-cv-01977-CCC-MF (“*Shepard*”), filed February 5, 2021; *McNealy v. Gerber Products Company*, Case No. 2:21- cv-09064-CCC-MF (“*McNealy*”), filed February 8, 2021; *Moore v. Gerber Products Company*, Case No. 2:21-cv-02516-CCC-MF (“*Moore*”), filed February 12, 2021; *Pierre-Louis v. Gerber Products Company*, Case No. 2:21-cv-04791-CCC-MF (“*Pierre-Louis*”), filed March 11, 2021; *Fondacaro v. Gerber Products*

Company, Case No. 2:21-cv-05032-CCC-MF (“*Fondacaro*”), filed March 12, 2021; *Martin v. Gerber Products Company*, Case No. 2:21-cv-05846-CCC-MF (“*Martin*”), filed March 19, 2021; *Henry v. Gerber Products Company*, Case No. 2:21-cv-05864-CCC-MF (“*Henry*”), filed March 19, 2021; and *Wallace v. Gerber Products Company*, Case No. 2:21-cv-09980-CCC-MF (“*Wallace*”), filed April 21, 2021 (together the “Related Actions”) and collectively all plaintiffs are referred to herein as “Plaintiffs.”

WHEREAS, Plaintiffs assert the Related Actions arise out of the same set of operative facts and assert similar legal claims against Defendant Gerber Products Company (“Gerber” or “Defendant”), alleging that Gerber has engaged in deceptive trade practices with respect to the marketing and sale of its baby food products (the “Baby Foods”) by failing to disclose that they contain levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury (the “Heavy Metals”);

WHEREAS, Plaintiffs assert that each Related Action seeks, *inter alia*, injunctive relief barring Gerber from continuing the deceptive practices it is accused of as well as monetary damages compensating Plaintiffs and other consumers for the purchase of the Baby Foods;

WHEREAS, Plaintiffs in each Related Action agree that consolidation of the Related Actions under Fed. R. Civ. P. 42(a) is appropriate because Plaintiffs contend they involve common questions of law and fact, arise from the same events, name the same Defendant, and will involve substantially the same discovery;

WHEREAS, consolidation under Rule 42(a) will eliminate duplicative discovery and the possibility of inconsistent rulings on class certification, *Daubert* motions, and other pretrial matters, and conserve judicial and party resources;

WHEREAS, Gerber has advised the undersigned counsel for the *Related Actions* that although Gerber vigorously disputes the merits of the allegations proffered against it in these lawsuits, Gerber stipulates to consolidation of the lawsuits Plaintiffs describe as “Related Actions” under Fed. R. Civ. P. 42(a), while expressly reserving all of its rights, remedies, defenses, objections, and legal arguments;

NOW THEREFORE, the Plaintiffs through their respective counsel and subject to the Court’s approval hereby stipulate that:

1. The *Shepard, Pierre-Louis, Moore, Fondacaro, Martin, McNealy, Henry* and *Wallace* actions currently pending in the District of New Jersey and any other class action arising out of the same or similar operative facts now pending or hereafter filed in, removed to, or transferred to this District shall be consolidated pursuant to Fed. R. Civ. P. 42(a) (hereafter the “Consolidated Action);

2. All papers filed in the Consolidated Action shall be filed under Case No. 2:21-cv-01977-CCC-MF and shall bear the following caption;

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: GERBER PRODUCTS COMPANY
BABY FOOD LITIGATION**

This Document Relates To:

_____ /

Master File No. 2:21-cv-01977-CCC-MF

3. The case file for the Consolidated Action will be maintained under Master File No. 2:21-cv-01977-CCC-MF. When a pleading is intended to apply to all actions to which this Order applies, the words “All Actions” shall appear immediately after the words “This Document Relates To:” in the caption described above. When a pleading is not intended to apply to all actions, the docket number for each individual action to which the paper is intended to apply and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates To:” in the caption identified above, for example, “2:21-cv-02516-CCC-MF (*Moore*).”

4. This Stipulation and Order is without prejudice to the Cross Motion of Plaintiff Moore, which is currently being briefed by the parties, to transfer the Related Actions to the U.S. District Court for the Eastern District of Virginia.

5. No Plaintiffs shall move for appointment of interim lead counsel until thirty (30) days after this Court rules on the Cross Motion to transfer these actions to the Eastern District of Virginia, and Plaintiffs shall not file a Consolidated Complaint until thirty (30) days after appointment of interim lead counsel. In the interim, Gerber need not file a response to the complaint in each Related Action and instead shall answer, move or otherwise respond to any Consolidated Complaint no later than sixty (60) days following service of a Consolidated Complaint.

IT IS SO STIPULATED.

/s/ Gary S. Graifman

Gary S. Graifman

Melissa R. Emert*

**KANTROWITZ, GOLDHAMER & GRAIFMAN,
P.C.**

135 Chestnut Ridge Road

Montvale, NJ 07645

Tel: (201) 391-7000

Fax: (201) 307-0186

grgaifman@kgglaw.com

memert@kgglaw.com

Counsel for Fondacaro and Wallace Plaintiffs

Gayle M. Blatt*

CASEY GERRY SCHENK

FRANCAVILLA BLATT & PENFIELD, LLP

110 Laurel Street

San Diego, CA 92101

Tel: (619) 238-1811

Fax: (619) 544-9232

gmb@cglaw.com

Counsel for Fondacaro Plaintiffs

/s/Jonathan Shub

Jonathan Shub

Kevin Laukaitis*

SHUB LAW FIRM LLC

134 Kings Highway E., 2nd Floor

Haddonfield, NJ 08033

Tel: (856) 772-7200

Fax: (856) 210-9088

jshub@shublawyers.com

klaukaitis@shublawyers.com

Counsel for Shepard Plaintiffs

Gary E. Mason*

Danielle Perry*

MASON LIETZ & KLINGER, LLP

5101 Wisconsin Avenue NW, Suite 305

Washington, DC 20016

Tel: 202-640-1168

Fax: 202-429-2294

/s/ Mark R. Rosen

Mark R. Rosen

BARRACK, RODOS & BACINE

One Gateway Center

Suite 2600

Newark, NJ 07102

Tel: (973) 297-1484

Fax: (973) 297-1485

mrosen@barrack.com

Counsel for Plaintiff Moore

/s/ James Shah

James Shah

MILLER SHAH LLP

2 Hudson Place

Suite 100

Hoboken, NJ 07030

856-526-1100

Fax: 866-300-7367

Email: Jcshah@Millershah.com

Email: apersinger@tzlegal.com

Counsel for Plaintiff Martin

/s/ Joseph DePalma

Joseph J. DePalma

Susana Cruz Hodge

**LITE DEPALMA GREENBERG
& AFANADOR, LLC**

570 Broad Street, Suite 1201

Newark, New Jersey 07102

Telephone: (973) 623-3000

Facsimile: (973) 623-0858

jdepalma@litedepalma.com

scrushodge@litedepalma.com

Counsel for Plaintiff McNealy

/s/ Liberato P. Verderame

Liberato P. Verderame

EDELSON & ASSOCIATES

3 Terry Drive

Suite 205

Newtown, PA 18940

gmason@masonllp.com
dliez@masonllp.com
Counsel for Shepard Plaintiffs

215-867-2399
Email: lverderame@edelson-law.com
Counsel for Plaintiff Henry

Charles E. Schaffer*
David C. Magagna Jr.
LEVIN, SEDRAN & BERMAN, LLP
510 Walnut Street, Suite 500
Philadelphia, Pennsylvania 191060
Tel: 215-592-1500
Fax: 215-592-4663
cschaffer@lfsblaw.com
dmagagna@lfsblaw.com
Counsel for Shepard Plaintiffs

Jeffrey S. Goldenberg*
GOLDENBERG SCHNEIDER L.P.A.
4445 Lake Forest Drive, Suite 490
Cincinnati, OH 45242
jgoldenberg@gs-legal.com
Counsel for Shepard Plaintiffs

/s/ Matthew R. Mendelsohn
Matthew R. Mendelsohn
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, New Jersey 07068
Tel: (973) 228-0391
mmendelsohn@mazieslater.com
Counsel for Pierre-Louis Plaintiffs

s/ Geoffrey W. Castello
Geoffrey W. Castello
Glenn T. Graham
KELLEY DRYE & WARREN LLP
One Jefferson Road
2nd Floor
Parsippany, NJ 07054
Tel: (973) 503-5900
gcastello@kelleydrye.com

Attorneys for Defendant Gerber Products Company

**pro hac vice to be filed*

ORDER PURSUANT TO STIPULATION,

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Mark Falk", with a long horizontal stroke extending to the right.

Hon. Mark Falk, U.S.M.J.
United States Magistrate

Dated: May 21_, 2021